# Motion to Vacate, Set Aside, or Correct a Sentence By a Person in Federal Custody

## (Motion Under 28 U.S.C. § 2255)

## Instructions

1. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.
2. You must file the form in the United States district court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.
6. If you cannot pay for the costs of this motion (such as costs for an attorney or transcripts), you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you.
7. In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge or division (either in the same district or in a different district), you must file a separate motion.
8. When you have completed the form, send the original and ____ copies to the Clerk of the United States District Court at this address:

   **Clerk, United States District Court for The District of Rhode Island**
   **Federal Building and Courthouse One Exchange Terrace, Providence,**
   **RI 02903**

   If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.
9. CAUTION: **You must include in this motion all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.**
10. CAPITAL CASES: **If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.**

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT

SENTENCE BY A PERSON IN FEDERAL CUSTODY

| | |
|---|---|
| **United States District Court** | District Rhode Island |
| Name *(under which you were convicted)*: Joseph A. Caramadre | Docket or Case No.: 11-cr-0186-S-PAS |
| Place of Confinement: FMC Devens, 42 Patton Road Ayer, Massachusetts 01432 | Prisoner No.: 08549-070 |
| UNITED STATES OF AMERICA V. | Movant *(include name under which convicted)* Joseph A. Caramadre |

## MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

   United States District Court for the District of Rhode Island, Federal Building and Courthouse
   One Exchange Terrace, Providence, RI 02903

   (b) Criminal docket or case number (if you know): 11-cr-0186-S-PAS

2. (a) Date of the judgment of conviction (if you know): 12/27/2013

   (b) Date of sentencing: 12/27/2013

3. Length of sentence: 72 months

4. Nature of crime (all counts):

   Petitioner was convicted of One Count of Wire Fraud Violation of 18 USC 1343 (Count Nine of the Indictment), and one Count of Conspiracy To Commit Offenses Against the United Sates in Violation of 18 USC 371 (Count 33 of the Indictment).

5. (a) What was your plea? (Check one)
   (1) Not guilty ☐ (2) Guilty ☑ (3) Nolo contendere (no contest) ☐

   (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

   Petitioner pleded guilty to Counts 9 and 33 of the Indictment, all remaining counts were dismissed on motion by the Government.

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☑ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☑ No ☐

8. Did you appeal from the judgment of conviction? Yes ☑ No ☐

9. If you did appeal, answer the following:
   (a) Name of court: United States Court of Appeals for the First Circuit
   (b) Docket or case number (if you know): 14-1196
   (c) Result: The Judgment of the District Court was affirmed
   (d) Date of result (if you know): 12/7/2015
   (e) Citation to the case (if you know): United States v. Caramadre, 807 F.3d 359 (1st Cir. 2015)
   (f) Grounds raised:

   (1) The District Court Employed An Erroneous Legal Standard In Deciding The Motion to Withdraw Petitioner's Guilty Plea; (2)The District Court Abused Its Discretion In Balancing The Factors Relevant To Petitioner's Motion to Withdraw His Guilty Plea; (3) The Rule 11 Hearing Was Constitutionally Infirm; (3) The District Court Exhibited Bias and Prejudged Petitioner's Motion to Withdraw His Guilty Plea; (4)The Appellate Waiver Did not Bar Petitioner's Appeal; (4) The District Court Engaged In Vindictive Sentencing; (5) The District Court Erred In Awarding Restitution In The Amount Of $46,330,077.61.

   (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☑ No ☐

   If "Yes," answer the following:
   (1) Docket or case number (if you know): No. 15-1269
   (2) Result: Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit was denied.
   (3) Date of result (if you know): 5/23/2016
   (4) Citation to the case (if you know): United States v. Caramadre, 136 S. Ct. 2455 (2016)
   (5) Grounds raised:

   1. That the plea agreement that Petitioner entered into was a contract of adhesion, against public policy, unethical and a violation of Petitioner's rights to due process of law and fundamental fairness guaranteed by the Fifth Amendment to the United States Constitution; (2) That the Petitioner was denied due process of law and fundamental fairness guaranteed by the Fifth Amendment to the United States Constitution, because the Court of Appeals ruled that the appeal waiver foreclosed Petitioner from challenging the District Court's findings, determinations and judgment.

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?
    Yes ☐ No ☑

11. If your answer to Question 10 was "Yes," give the following information:
    (a) (1) Name of court: ______
    (2) Docket or case number (if you know): ______
    (3) Date of filing (if you know): ______
    (4) Nature of the proceeding: ______
    (5) Grounds raised: ______

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: ____________________

(8) Date of result (if you know): ____________________

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: ____________________

(2) Docket of case number (if you know): ____________________

(3) Date of filing (if you know): ____________________

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: ____________________

(8) Date of result (if you know): ____________________

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE:** As the result of the ineffective assistance of Petitioner's counsel, his guilty plea was not knowing and voluntary and as a result, his 5th and 6th Amendment rights were abridged.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

As more filly explicated in Petitioner's Memorandum of Law in Support of his Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. 2255, his declaration in support thereof and the declaration of Raymour Radhakrishnan (all of which are submitted herewith and incorporated by reference herein), Petitioner most respectfully asserts that he was deprived of his 5th Amendment rights to due process of law and his constitutional right to present a complete defense, including the right to present witnesses in his own defense, as well as his 6th Amendment right to the effective assistance of counsel, as a result of his trial counsels' failure to undertake the steps necessary to have determined that Petitioner's co-defendant, Raymour Radhakrishnan, was willing to provide compelling exculpatory evidence on Petitioner's behalf if Mr. Radhakrishnan was tried at a separate trial and further, that it constituted ineffective assistance of counsel for the failure of his trial counsel to move before the District Court for a severance pursuant to Rule 14 of the Fed. R. Crim. Pro., based upon Petitioner's need for the testimony of co-defendant, Raymour Radhakrishnan, and that as the result of Petitioner's counsels' ineffective assistance, Petitioner was induced to enter a guilty plea, which he would not have entered but rather would have insisted on going to trial. As as result, Petitioner's guilty plea was not a knowing and voluntary waiver of his right to a trial, and accordingly, his plea and the Judgment of Conviction should be vacated and Petitioner granted the right to a new trial.

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☑

(2) If you did not raise this issue in your direct appeal, explain why:

The First Circuit has directed that issues of IAC are to be raised by collateral proceedings (28 U.S.C. Sec. 2255), rather than direct appeal. United States v. García-Pagán, 804 F.3d 121, 126 (1st 2016).

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☑

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: ______

Name and location of the court where the motion or petition was filed:

______

Docket or case number (if you know): ______

Date of the court's decision: ______

Result (attach a copy of the court's opinion or order, if available):

______

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND TWO:**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: __________

Name and location of the court where the motion or petition was filed:

__________

Docket or case number (if you know): __________

Date of the court's decision: __________

Result (attach a copy of the court's opinion or order, if available):

__________

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

__________

Docket or case number (if you know): __________

Date of the court's decision: __________

Result (attach a copy of the court's opinion or order, if available):

__________

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

__________

**GROUND THREE:** __________

__________

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

__________

(b) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND FOUR:**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing:
Michael J. Lepizzera. Esq., 117 Metro Center Blvd., Ste. 2001, Warwick, RI 02886

(b) At the arraignment and plea:
Michael J. Lepizzera. Esq.,

(c) At the trial:
Michael J. Lepizzera. Esq. & Anthony M. Traini. Esq., 56 Pine St., Ste. 2, Providence, RI 02903

(d) At sentencing:
Randy Olen. Esq., 478A Broadway, Providence, RI & William J. Murphy, Esq. 127 Dorrance St. Providence RI

(e) On appeal:
Randy Olen, Esq., & Robert F. Weber, Esq. 478A Broadway, Providence, RI

(f) In any post-conviction proceeding:
N/A

(g) On appeal from any ruling against you in a post-conviction proceeding:

N/A

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☑ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☑

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: ______

(c) Give the length of the other sentence: ______

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

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* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

(1) the date on which the judgment of conviction became final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

Petitioner asks that an Order of this Court issue vacating his plea of guilty, vacating the Judgment of Conviction and granting Petitioner a new trial, and if the instant Petition should be denied, that a Certificate of Appealability issue

or any other relief to which movant may be entitled.

______________________________
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on ______________________ .
(month, date, year)

Executed (signed) on 5/9/2017 (date)

______________________________
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.